

## Message Text

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ORIGIN L-03

INFO OCT-01 EUR-12 ISO-00 EB-08 AGRE-00 CEA-01 CIAE-00  
COME-00 DODE-00 FRB-03 H-01 INR-10 INT-05 LAB-04  
NSAE-00 PA-01 CTME-00 AID-05 SS-15 STR-07 ITC-01  
TRSE-00 SP-02 SOE-02 OMB-01 DOE-11 NSCE-00 SSO-00  
USIE-00 INRE-00 IO-13 /106 R

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FM SECSTATE WASHDC  
TO AMEMBASSY BUDAPEST IMMEDIATE

C O N F I D E N T I A L STATE 035224

E.O. 11652: GDS

TAGS: EEWT, HU

SUBJECT: U.S.-HUNGARIAN TRADE AGREEMENT NEGOTIATIONS

REF: (A) BUDAPEST 585 (B) STATE 33686 (C) BUDAPEST 546

1. WE REGRET MISUNDERSTANDINGS THAT SEEM TO HAVE ARISEN  
AS RESULT OF REFTELS. PURPOSE OF REFTEL B WAS TO BRING TO  
DELEGATION'S ATTENTION POSSIBLE PROBLEMS INVOLVED IN  
INCORPORATING GATT PROCEDURES REQUIRING THIRD-PARTY ACTION  
INTO BILATERAL AGREEMENT.

2. DELEGATION MAY BE CORRECT THAT GATT CONTRACTING PARTIES,  
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(CPS) WOULD AGREE TO RESOLVE DISPUTES UNDER U.S.-  
HUNGARIAN BILATERAL. CERTAINLY NOTHING PREVENTS CPS FROM  
DECIDING SUCH DISPUTES, IF THEY WISH TO MAKE NECESSARY  
COMMITMENT OF MONEY, TIME AND PERSONNEL. (THERE IS SOME  
QUESTION IN LIGHT OF PARAS. 5 AND 7 OF HUNGARIAN PROTOCOL  
WHETHER CPS IN ANY EVENT WOULD RESOLVE A DISPUTE BETWEEN

HUNGARY AND ANY PARTY.)

3. HOWEVER, AS DELEGATION IS AWARE, U.S. AND HUNGARY CANNOT LEGALLY COMMIT THIRD PARTIES (GATT CPS) TO AGREE TO CONSIDER OR SETTLE A DISPUTE BETWEEN U.S. AND HUNGARY, IN THE ABSENCE OF DISINVOCATION OF ARTICLE XXXV. BECAUSE OF INVOCATION OF ARTICLE XXXV, U.S. AND HUNGARY DO NOT HAVE RIGHTS AND OBLIGATIONS BETWEEN EACH OTHER UNDER THE GATT, ALTHOUGH UNDER THE TRADE AGREEMENT THEY MAY AGREE TO ACT AS IF THEY DO.

4. ON LEGAL ISSUE OF DISINVOCATION BY IMPLICATION OF ARTICLE XXXV, IT IS CERTAINLY TRUE THAT U.S. VIEW IS THAT FORMAL ACTION IS REQUIRED. AS WOOD MEMO NOTES, THERE ARE ARGUMENTS ON THE OTHER SIDE. THESE CAN BE HANDLED BY MAKING CLEAR TO THE CPS (SHOULD, FOR EXAMPLE, EITHER PARTY SUBMIT A DISPUTE TO THE CPS) THAT WE ACCEPT (OR SEEK) ACTION OF THE CPS ON THE UNDERSTANDING THAT OUR INVOCATION OF ARTICLE XXXV REMAINS IN EFFECT.

5. IN SUM, WASHINGTON VIEW IS THAT U.S. AND HUNGARY AS A LEGAL MATTER CAN AGREE TO SUBMIT APPROPRIATE DISPUTES TO THE CPS, AND THAT U.S. INVOCATION OF ARTICLE XXXV CAN BE ADEQUATELY PROTECTED. WHAT U.S. AND HUNGARY CANNOT DO, AS HUNGARIANS SHOULD ALSO BE AWARE, IS COMMIT CPS TO ACT ON QUESTIONS BETWEEN TWO COUNTRIES NOT APPLYING THE GATT BETWEEN THEMSELVES. CONFIDENTIAL

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6. POLICY QUESTION RAISED IN PARA 6 REF B WAS NOT INTENDED TO QUESTION THE GENERAL DESIRABILITY OF DRAWING HUNGARY MORE CLOSELY INTO THE GATT. WHERE ONLY ISSUE IS INTERPRETING A GATT PROVISION, GATT MECHANISMS MIGHT BE HELPFUL IN SETTLING OUR BILATERAL DISPUTES. SOME DISPUTES, E.G., INVOLVING GATT PROVISIONS WHICH WE BELIEVE ARE INCONSISTENT WITH BILATERAL, PRESUMABLY WOULD NOT BE APPROPRIATE FOR CP ACTION. HOWEVER, SINCE GATT PROCEDURES MAY BE INVOKED BY ONE PARTY TO A DISPUTE WITHOUT CONSENT OF OTHERS, THERE MAY BE SOME RISK OF EMBARRASSMENT IF HUNGARY AND CPS DO NOT SHARE OUR VIEWS AS TO WHAT IS APPROPRIATE FOR CP ACTION. THAT RISK, WHICH MAY BE SMALL IN PRACTICAL TERMS, OF COURSE MUST BE WEIGHED BY DEL AGAINST BENEFITS, IN POLITICAL OR TRADE TERMS, WHICH DEL SEES IN ACCOMMODATING GOH WISHES.

7. AS TO QUESTION OF MTN CODES, THEIR EXACT LEGAL RELATION TO GATT HAS NOT YET BEEN ESTABLISHED. REFTTEL B DID NOT ADDRESS QUESTION OF JOINT ADHERENCE TO CODES.

WE SEE NO REASON JOINT ADHERENCE SHOULD NOT BE POSSIBLE  
SUBJECT TO QUALIFICATIONS IMPOSED BY U.S. LAW, E.G.,  
IN SAFEGUARDS CODE. WE MAY WISH TO EXPLORE HOW THIS BEST  
CAN BE HANDLED ON DEL'S RETURN.

8. WE APPRECIATE THE CONCERNS EXPRESSED IN REF A THAT  
INTRANSIGENCE ON THESE LEGAL QUESTIONS COULD CLOUD  
CHANCES FOR EARLY AGREEMENT. B'T WE ARE PERSUADED THAT  
THERE EXIST A NUMBER OF FORMULATIONS THAT COULD BE USED  
TO MEET OUR ESSENTIALLY TECHNICAL LEGAL REQUIREMENTS ON  
THE GATT RELATIONSHIP. WE WOULD BE PREPARED TO ENTERTAIN  
LANGUAGE THAT WOULD BRIDGE THESE DIFFERENCES. THESE  
ISSUES DO NOT IN ANY CASE SEEM CENTRAL TO THE SUBSTANCE  
OF THE AGREEMENT EVEN THOUGH BEHIND THEM MAY LIE SOME  
VERY STRONGLY HELD HUNGARIAN VIEWS. FINALLY, WE WISH  
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TO ASSURE YOU THAT THERE IS FLEXIBILITY HERE ON ALL OF  
THESE POINTS.

9. (STR HAS NOT HAD AN OPPORTUNITY TO REVIEW THIS CABLE.)  
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NNN

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